

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

JOANN FREEMAN,

Plaintiff,

v.

ALL-AMERICA FOODS, INC.
d/b/a BURGER KING,

Defendant.

CAUSE NO.

COMPLAINT

Comes now Plaintiff, by counsel, alleges against the Defendant as follows:

1. The Plaintiff is Joann W. Freeman, a resident of Allen County, Fort Wayne, Indiana at all material times to this Complaint.
2. The Defendant is All-America Foods, Inc., d/b/a "Burger King", a company doing business at 10201 Illinois Rd, Fort Wayne, IN, 46814. At all material times to this Complaint, the Defendant was an "employer" for the purposes of Title VII of the Civil Rights Act of 1964 42 U.S.C. § 2000 (e) et seq. ("Title VII"), 42 U.S.C. § 1981, and the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 et seq. ("ADEA").
3. The Plaintiff filed a Charge of Discrimination on July 29, 2013, # 3C-0159-A13/ # 24D-2013-00396, a copy of which is attached hereto, incorporated herein, and made a part hereof as Exhibit "A". The EEOC issued a Dismissal and Notice of Rights/ Notice of Suit Rights on March 27, 2014, a copy of which is attached hereto as Exhibit "B". All administrative remedies have been exhausted and all jurisdictional prerequisites have been met for the filing of this lawsuit.

4. The Plaintiff was employed by the Defendant from on or about October 1, 2012, until her separation from employment on or about July 9, 2013. The Plaintiff performed within the reasonable expectations of the employer at all material times to this Complaint, and was over the age of forty (40) at the time of separation from employment. She is a black/African American female.
5. Throughout the Plaintiff's employment, she was treated less favorably than similarly situated employees under the age of forty (40), and those that were of a different race than the Plaintiff.
6. The Defendant failed to provide the Plaintiff the same training as similarly situated employees under the age of forty (40), and/or whom were non-black/non-African American;
7. In addition, similarly situated male employees were shown favoritism by the Defendant, in the provision of work hours, and training.
8. Similarly situated non-black/non-African American employees, those under the age of forty (40), and male employees were also treated less harshly than the Plaintiff as to the enforcement of the Defendant's policies and rules. The Plaintiff, for example, was disciplined on one (1) or more occasions when she was late to work, although similarly situated employees outside of her protected categories who were consistently late, were not disciplined by the Defendant, even when they failed to give notice that they would be late to work.
9. The Plaintiff contends that the Defendant discriminated against her on the basis of her age (over forty), and her sex (female), and/or discriminated against and

retaliated against her due to her race (black/African American), in violation of the Plaintiff's federally protected rights under Title VII, § 1981, and the ADEA. The Defendant's discriminatory and/or retaliatory conduct furthermore was the direct and proximate cause of the Plaintiff suffering the loss of her job and job related benefits including income and subjected the plaintiff to inconvenience, mental anguish, emotional distress, and other damages and injuries.

10. The Defendant's discriminatory and/or retaliatory conduct was also intentional, knowing, willful, wanton, and in reckless disregard of the Plaintiff's federally protected rights under Title VII, § 1981, and/or the ADEA, entitling the Plaintiff to punitive damages (where available), and liquidated damages (where available).

WHEREFORE, Plaintiff respectfully prays for judgment against the Defendant for compensatory damages, punitive damages (where available), liquidated damages (where available), reasonable attorney's fees and costs, and for all other just and proper relief in the premises.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury in this action.

Respectfully submitted,

CHRISTOPHER C. MYERS & ASSOCIATES

/s/Ilene M. Smith

Christopher C. Myers, #10043-02

Ilene M. Smith, #22818-02

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Attorneys for Plaintiff

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CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☒ FEPA

EC-0159-A13

☒ EEOC

24D-2013-00396

City of Fort Wayne Metro Human Relations Commission

and EEOC

Name (Indicate Mr., Ms., Mrs.)

State or local Agency, if any

Joann W. Freeman

Home Phone (Incl. Area Code)

Date of Birth

Street Address

City, State and ZIP Code

1726 Freedom Dr, Fort Wayne, IN 46814

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

No. Employees, Members

Phone No. (Include Area Code)

BURGER KING

15 - 100

(260) 625-5064

Street Address

City, State and ZIP Code

10201 Illinois Road, Fort Wayne, IN 46814

EEOC Indiana
District OfficeAUG 03 2013
RECEIVED

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☒

RACE

☐

COLOR

☒

SEX

☐

RELIGION

☐

NATIONAL ORIGIN

☐

RETALIATION

☒

AGE

☐

DISABILITY

☐

GENETIC INFORMATION

☐

OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

10-01-2012

07-29-2013

☒

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)).

I am a qualified employee who is fifty-two (52) years old and has been working at Burger King since October of 2012. Since that time, I am have not been scheduled for the same amount of hours as co-workers. These co-workers are younger than I am and are a different race. One of the employees, who is my same race, is a male and is the manager's son.

I have also not received the same training as these other employees so am not being given the same opportunities.

For these reasons, I believe I have been discriminated against on the basis of my age, over 40, in violation of the Age Discrimination in Employment Act of 1967, as amended and because of my race, black, and gender, female, in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

Jul 29, 2013

Date

Joann W. Freeman

Charging Party Signature

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

EXHIBIT "A"

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Joann W. Freeman
1723 Patriot Drive
Fort Wayne, IN 46814

From: Indianapolis District Office
101 West Ohio St
Suite 1900
Indianapolis, IN 46204



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

24D-2013-00396

Randy G. Poynter,
Enforcement Supervisor

(317) 226-5670

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred **more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

JUN 27 2014

Enclosures(s)

Webster N. Smith,
Director

(Date Mailed)

cc: Ms. April S. Grunden, Esq.
Grunden Law Office
9815 Dawson's Creek Blvd
Fort Wayne, IN 46825

FILE COPY

EXHIBIT "B"